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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR     | ATTORNEY DOCKET NO. | CONFIRMATION NO.              |
|---|-------------|--------------------------|---------------------|-------------------------------|
| 10/828,657  | 04/20/2004  | Frances Chandler Wilkins | 018794-013700US     | 4922                          |
| 20350   | 7590        | 04/10/2006               | EXAMINER            |                               |
| TOWNSEND AND TOWNSEND AND CREW, LLP<br>TWO EMBARCADERO CENTER<br>EIGHTH FLOOR<br>SAN FRANCISCO, CA 94111-3834 |             |                          |                     | LEVY, NEIL S                  |
|   |             |                          |                     | ART UNIT<br>1615 PAPER NUMBER |

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/828,657             | WILKINS ET AL.      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | NEIL LEVY              | 1615                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 January 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 5-41 is/are pending in the application.
- 4a) Of the above claim(s) 21-41 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 5-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1 and 5-41 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/22/05.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election/Restrictions***

Applicant's election without traverse of Group I, species polysaccharide, carbon as carrier, & methoprene, in the reply filed on 1/18/06 is acknowledged.

Claims 21-41 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/18/06

. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Claims 1 , 5-20 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Please address/amend to avoid confusion: the limits of pesticide concentration are 100%, yet there is a biopolymer & carrier present , with plaster of paris, so; what is the pesticide concentrations of 20-100%,1-20 %, & < 1% , based on?

ClaimS 1,5- 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke 4876091 in view of Sjogren- 4732762 and MYLES-5676960.

The rejection of record is maintained;

C lark teaches methoprene on carbon carrier (col 3, lines 8-17), in a wetted plaster of paris pH 7 pellet(col. 4, lines 5—28) at about 5% pesticide(col 6, top). The products can be adjusted to control release rate (col 4, bottom) over the life of the pellet (co. 5, lines 22-30), but a year is undisclosed, nor is a polymer mentioned. C larke shows that the pellets can last substantioally longer the the 150 day pellets of Sjogren 4732762 (col. 4, lines 40-57). MYLES provides polymers (col. 6, loins 43-53) with pesticides (col. 6, top-methoprene,col.7,lines 50-60, col. 19, lines 14-30) with the polymers, and can incorporate carbon & plaster of paris (col. 7,lines 20-23). Additive components are shown by Myles-(col.5, lines 42-49) if desired.

Applicant's arguments filed 1/18/06 have been fully considered but they are not persuasive. Applicant's arguments are directed to a failure to provide the instant stability demonstrated in the art of record. However, a composition is claimed, and we find other bases for providing that composition; improved control of release of the pesticide. Applicant's pointing to unobvious or superior results is beyond the scope of the invention as it is claimed., thus the rejection of the instant claims stands.

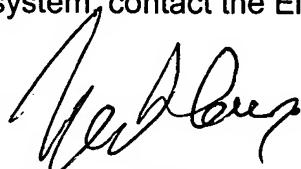
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL LEVY  
Primary Examiner  
Art Unit 1615

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